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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

BOBBY STARNES,

Plaintiff,

vs.

SHAWN J. MCCANN; GIRARDI | KEESE  
a law firm, form and entity unknown ; and  
DOES 1-180, inclusive,

Defendants.

) Case No.

) **COMPLAINT**

- ) 1. Professional Malpractice  
) 2. Breach of Fiduciary Duty  
) 3. Breach of Contract  
)

**COMPLAINT**

Plaintiff Bobby Starnes respectfully alleges:

**JURISDICTION**

1. This court has jurisdiction under 28 U.S.C. § 1332 because there is diversity of citizenship and an amount in controversy greater than \$75,000.

**VENUE**

2. Venue is proper pursuant to 28 U.S.C § 1391 because the events giving rise to this complaint happened in this district.

**THE PARTIES**

3. Plaintiff Bobby Starnes, ("Bobby Starnes") is a Georgia resident.
4. Defendant Shawn McCann ("McCann") is a California licensed attorney in the business of providing legal services as an associate employed by the firm of Banafsheh, Danesh, & Javid PC, with a place of business in City of Beverly Hills, State of California, and formerly employed by defendant Girardi | Keese.
5. Defendant Girardi | Keese ("Girardi") is a California licensed firm of attorneys in the business of providing legal services with a place of business in the City of Los Angeles, State of California.
6. McCann and Girardi are collectively referred to as Defendants unless otherwise stated.

**BACKGROUND OF THE CONTROVERSY**

7. By this action, Bobby Starnes seeks damages for the malpractice, breach of fiduciary duty and breach of agreement entered into with Defendants (the "Contract") by which defendants agreed to represent Bobby Starnes as capable responsible lawyers as more fully set forth herein. The legal malpractice of defendants as such attorneys for Bobby Starnes took place in the context of a legal action which had been filed in the Superior Court of the County of San Bernardino on or about June 23, 2011 styled *Starnes v. James Ronald Pollard*, et al, San Bernardino Superior Court Case No. CIVRS 1105986 (the "Underlying Action") and later in an action derivative from the Underlying Action, an adversary proceeding filed by Plaintiff Bobby Starnes against Naveen V. Samuel one of the primary figures in the Underlying Action on or about January 25, 2013, styled *Starnes v. Samuel*, et al, United States Bankruptcy Court Case No. 6:12-bk-33836-MW, Adversary Case No. 6:13-ap-01040-MW (the "Additional Underlying Action," and collectively with the Underlying Action, hereafter, the "Underlying Actions").

- 1 8. Defendants held themselves out to have represented Bobby Starnes in the  
2 Underlying Actions pursuant to the Contract during the times relevant to this  
3 action from in or about May of 2013 until on or about March 3, 2014.
- 4 9. During the foregoing representation of Bobby Starnes, Defendants negligently  
5 represented Bobby Starnes in the Underlying Action in that, *inter alia*, they failed  
6 to adequately investigate, gather, note and/or present, turn over and confirm with  
7 Bobby Starnes facts vital to the prosecution of the Underlying Action, and  
8 ultimately failed to meet and confer and then to appear at the Additional  
9 Underlying Action which failures resulted in adverse rulings of the Bankruptcy  
10 court against the interests of Bobby Starnes, including, but not limited to, the  
11 dismissal by the Bankruptcy Court of his adversary proceeding against a defendant  
12 in the Additional Underlying Action, and ultimately, based thereon, the dismissal  
13 of Bobby Starnes's action against that defendant in the Underlying Action itself  
14 including the consumer related causes of action in the Underlying Action.

15 **GENERAL ALLEGATIONS**

- 16 10. Bobby Starnes is presently unaware of the true names and capacities, whether  
17 individual, associate, corporate, or otherwise of Does 1 through 90 or any of them,  
18 and therefore sues such persons by such fictitious names. Bobby Starnes will seek  
19 leave to amend this Complaint to show the true names and capacities of such  
20 fictitiously named persons when the same have been ascertained. Bobby Starnes is  
21 informed and believes and thereon alleges that each of the persons designated  
22 herein as a DOE is legally responsible in some manner for the acts, omissions, and  
23 events alleged herein, and has proximately caused damages and injury to Bobby  
24 Starnes as herein alleged.
- 25 11. Bobby Starnes is informed and believes and thereon alleges that at all times herein  
26 mentioned, each defendant was and now is the agent, servant, employee, co-  
27 conspirator, representative and/or alter ego of each of the remaining defendants  
28

1 and, in doing the things hereinafter mentioned, was acting within the scope of his  
2 authority as such agent, servant, employee co-conspirator, and/or representative  
3 with the permission and consent of the remaining defendants.

4  
5 FIRST CAUSE OF ACTION

6 (Professional Negligence Against Defendants Shawn J. Mccann, Girardi | Keese and  
7 Does 1 through 60)

8  
9 12. The foregoing paragraphs 1-11 are incorporated herein as if fully stated.

10 13. At all times herein mentioned, and within one year from the date of filing of this  
11 action, Defendants were employed as attorneys by Bobby Starnes to manage,  
12 advise, and conduct the foregoing litigation matters in the Underlying Action and  
13 the Additional Underlying Action, and held themselves out to Bobby Starnes to  
14 possess that degree of skill, ethics, ability, and learning common to attorneys in  
15 that community with respect to the representation provided to Bobby Starnes.

16 14. Defendants represented to Bobby Starnes that they had experience, knowledge,  
17 training, skill, ability, and ethical standards consistent with the requirements of the  
18 practice of law in the State of California in the state and federal courts, and that  
19 they could and would perform services for Bobby Starnes in a manner consistent  
20 therewith.

21 15. During the course of their representation in the Bankruptcy Court as a part of the  
22 services for which they had been hired by Bobby Starnes, Defendants negligently  
23 undertook to prepare for and to meet and confer with opposing counsel in and for  
24 the Pre-Trial Conference Order in the Additional Underlying Action, and then,  
25 despite their protestations of competence, Defendants failed to appear at the Pre-  
26 Trial Conference held on October 3, 2013 where no counsel for Plaintiff arrived  
27 prior to the time the Court had granted judgment of dismissal in favor or the  
28

1 Debtor Samuel in the Additional Underlying Action, which was then utilized to  
2 secure dismissal of the Underlying Action in favor of the Debtor Samuel with the  
3 net result that both Underlying Actions were dismissed for a defendant whose  
4 counterpart Dr. Pollard, in the Underlying Action, offered \$100,000 (not accepted)  
5 in a Code of Civil Procedure 998 offer to settle his own action. Then, and despite  
6 the ethical and professional duties owed to Bobby Starnes, Defendants persisted in  
7 attempting to cover up and prevaricate when asked by Bobby Starnes's co-counsel  
8 about the incident, as a direct and predictable result of which, the Bankruptcy  
9 Court latter refused ot reopen or reconsider the order dismissing the Additional  
10 Underlying Action. Despite Bobby Starnes's hiring special bankruptcy counsel and  
11 expending resources in the effort of attempting to salvage the matter, the  
12 Bankruptcy Court, upon a hearing, determined that the conduct of Defendants was  
13 inexcusable and non-defensible. To compound the damages to Bobby Starnes, not  
14 only did defendants attempt to hide their original failures with untrue excuses,  
15 refuse to be truthful and assist in the attempt to salvage their acts and  
16 misrepresentations, but finally, when asked to cooperate by turning over files and  
17 billing records either were late or in total denial of the obligations to cooperate  
18 with their client Bobby Starnes. As if to add icing to that cake, Defendants  
19 continued to contact Bobby Starnes directly in order to attempt to deflect the  
20 responsibility for those acts, even after Defendants had withdrawn from  
21 representation and knew that Bobby Starnes was represented by other counsel in  
22 violation of duties under the Rules of Professional Conduct of the California Bar.  
23 As a result of the acts which typify negligence of the highest order, Bobby Starnes  
24 was damaged in an amount to be proven at trial. In the absence of the  
25 unprofessional acts, the damage would not have occurred.

- 26 16. As a proximate result of the foregoing negligence of Defendants, and each of  
27 them, to adequately investigate, gather, note and/or present to the court facts vital  
28

1 to the prosecution of Bobby Starnes's case in the Underlying Actions Bobby  
2 Starnes was subjected to adverse rulings in each of the court and damages  
3 therefrom and will suffer future damages in excess of the jurisdictional limits of  
4 this Court. Bobby Starnes will seek leave to amend this complaint to state the true  
5 amount when ascertained or at trial.

6  
7 SECOND CAUSE OF ACTION

8 (Breach of Contract Against Defendants Shawn J. Mccann, Girardi | Keese and Does 61  
9 through 120)

10  
11 17. The foregoing paragraphs 1-16 are incorporated herein as if fully stated.

12 18. Bobby Starnes hereby restates and incorporates by reference paragraphs 1 through  
13 13 above as though set forth in full herein.

14 19. In or about May of 2013, Bobby Starnes and Defendants, at Los Angeles County,  
15 California, entered into the Contract for legal services to be performed by  
16 Defendants as attorneys, with Bobby Starnes as client, in the litigation of the  
17 Underlying Action, and later the Additional Underlying Action which provides  
18 that in return for Bobby Starnes promising to pay the contingency fee charged by  
19 defendants for their services and costs advanced or incurred by them on behalf of  
20 Bobby Starnes as well as costs and fees of co-counsel, Defendants promised  
21 services as lawyers to include research, investigation of facts, drafting of  
22 pleadings, discovery and if not earlier settled, trial, as well as any other appropriate  
23 activities related to" the Underlying Actions.

24 20. Bobby Starnes has performed all conditions, covenants, and promises required on  
25 his part to be performed in accordance with the terms and conditions of the  
26 Contract except for any which were excused or prevented from being performed  
27 by Defendants.

1 21. Defendants breached the Contract by the foregoing acts and omissions.

2 22. As a proximate result of the foregoing breaches of the Contract and ethical duties  
3 thereunder Bobby Starnes was subjected to adverse rulings in each of the courts  
4 and damages therefrom and will suffer future damages in excess of the  
5 jurisdictional limits of this Court. Bobby Starnes will seek leave to amend this  
6 complaint to state the true amount when ascertained or at trial.

7  
8 THIRD CAUSE OF ACTION

9 (Breach of Fiduciary Duty Against Defendants Shawn J. Mccann, Girardi | Keese and  
10 Does 121 through 180)

11  
12 23. The foregoing paragraphs 1-22 are incorporated herein as if fully stated.

13 24. By virtue of the relationship as attorney and client, the relationship between Bobby  
14 Starnes and Defendants was fiduciary in nature as a matter of law. Defendants  
15 thereby owed Bobby Starnes a fiduciary duty to deal with Bobby Starnes with the  
16 highest ethics and good faith.

17 25. By virtue of the foregoing facts, Defendants breached the trust and violated the  
18 relationship of by the foregoing acts to Bobby Starnes's prejudice and proximately  
19 caused damage thereby in an amount in excess of the jurisdictional limits of this  
20 court.

21  
22 Wherefore, Bobby Starnes prays as follows:

23  
24 26. Compensatory damages, including general and special damages, according  
25 to proof;

26 27. Interest at the statutory rate from the date of the Defendants bad acts;

27 28. Any further relief which the court may deem appropriate.



**DEMAND FOR JURY TRIAL**

29. Plaintiff hereby requests a jury trial on all issues raised in this complaint.

Dated: March 2, 2015

LAW OFFICES OF JAMES P. WOHL

By:   
James P. Wohl  
Attorneys for Plaintiff Bobby Starnes